

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2686 OF 2001

1. The Hindustan Petroleum Pensioner's Association through its President, Rohit Padmakant Desai, Suhag A-1, 61, Sr. Laloobhai Road, Andheri (W), Mumbai 400 058.
2. Gangadhar Marutrao Kannamwar of Mumbai, an adult Indian Inhabitant, having his address at Shanti Sadan, Ground Floor, Keluskar Road, Shivaji Park, Dadar, Mumbai 400 028.
3. Bhalchandra Purushottam Vaidya of Mumbai, an adult Indian Inhabitant having his address at 202-Sera Nymph, Greenfield's Estate, Juhu, Mumbai 400 049.
4. Laxman Sahadev Kalvankar of Mumbai an adult, Indian Inhabitant having his address at 405-H, Mohd. Nura Lane, Hajare Bhavan, Bandra, Mumbai 400 050. Petitioners

Vs.

1. Union of India through the Secretary, to the Government, Ministry of Petroleum and Natural Gas (MOP&NG), Government of India, Shastri Bhavan, New Delhi 110 001.
 2. Hindustan Petroleum Corporation Limited, a Government of India Undertaking, having its registered office at 17, Jamshedji Tata Road, Petroleum House, Mumbai 400 020. .. Respondents
- Mr. Jai Chinoy, Sr. Advocate with Mr. Sanjay Jain and Mr. Prashant Kulkarni i/by Zoahir & Co. for Petitioner.
- Mr. Y.R. Mishra with Mr. D.A. Dubey and Mr.Y.S. Bhate for R. No. 1.
- Mr. S. Ramaswamy i/by Mulla & Mulla & C.B. & C. for R. No. 2.

**CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.**
DATED: OCTOBER 05, 2006

ORAL JUDGMENT (Per F.I. Rebello,J.):

1 . The Petitioners are an unregistered Association of retired employees and officers who were earlier employed with erstwhile Esso & Caltex and other entities and now are pensioners of Respondent No. 2. It is the case of the Petitioners that Respondent No. 2 is not acting fairly, justly and reasonably in the matter of grant of pension to retired employees. The Respondent No. 2 vide its decision conveyed by letter dated 5.5.1999 has rejected the request of the Petitioners for the grant of reasonable pension which assures them a dignified subsistence. It is the case of the Petitioners that ESSO and Caltex had history of recasting of basic pension. After the take over, the Petitioners were entitled to protection amongst others of their pensionary benefits. It is set out that pursuant to recommendations of the 5th Pay Commission, which were accepted by the Government of India, they being also employees of the Corporation, which is State within the meaning of Article 12 of the Constitution of India would be entitled to revised pension. At any rate, it is submitted that the principles laid down by the Government while implementing the recommendations of the 5th Pay commission and Justice Mohan pay commission ought to

be applied to them. The Petitioners' consequently have also sought some other reliefs.

2. On behalf of the Respondent No. 2, reply has been filed. It is pointed out that the Petitioners earlier filed Writ Petition being Writ Petition No. 1 of 1993 before Supreme Court of India under Article 32 of the Constitution which was not entertained by the Supreme Court. After the refusal by the Supreme Court, Writ Petition No. 1036 of 1993 came to be filed before this court which was withdrawn. Similarly Writ Petition No. 1902 of 1993 was filed and was withdrawn on 22.7.1994. Another Writ Petition (L) No. 300 of 2000 was filed before the Supreme Court of India and the Petition was dismissed without prejudice to the rights and contentions, if any to move appropriate Forum. Considering the orders, really speaking a fresh petition in respect of the same subject matter would not be maintainable.

3. It is further pointed out that employees who joined Respondent No. 2, after formation of Respondent No. 2 are entitled to the following terminal benefits :

(a) Contributory Provident Fund where 12% currently of the salary drawn by the

employees is deducted towards provident fund and an equivalent amount is contributed by the Respondent Corporation towards provident fund.

(b) Gratuity as per the provisions of the Payment of Gratuity Act.

. The employees of the erstwhile ESSO/ Caltex who became employees of Respondent Corporation after nationalization are also being given them benefits viz. contributory provident fund and gratuity. It is pointed out that in view of Section 9 and 11 of the ESSO and Caltex Acquisition Acts, the said Pensioners have been and are getting pension as per the pension schemes of the erstwhile Esso/Caltex Companies. The reliefs sought for by the Petitioners do not accrue as a matter of right. Apart from that it is pointed out that Respondent No. 2 though not bound, have been revising the pension from time to time. The services of the erstwhile employees of ESSO and Caltex who continued with Respondent No. 2 like Petitioners after the nationalization were duly terminated in accordance with the terms and conditions of the contract and all applicable regulations governing conditions of services. They were reappointed under new terms and conditions of service in new scales of pay and all

the eligible officers of ESSO and Caltex whose services were terminated before they were reappointed and placed on new scales of pay in the year 1980 were allowed proportionate undiscounted pension provided they completed the minimum number of years of service, as required under their existing rules to entitle them to pension. It is submitted that the Petitioners are not entitled to pension as provided to Government employees and others governed by the recommendations of the 5th Pay Commission.

4. It is the submission of the Petitioners, that the action and the attitude of the second respondent to the Petitioner's pensionary entitlements are violative of Article 14, 16, 19, 20 and 39 of the Constitution of India. The Respondent No. 2 who is a "State" within the meaning of Article 12 of the Constitution of India is not acting fairly, justly and reasonably in the matter of grant of pension to the retired employees and is ignoring the judgments of the courts in similar matters involving the Government undertakings. The Petitioners who have moved this court are at very advanced stage. They are scattered in various parts of India and hence, the present petition on behalf of the similarly covered pensioners. It is submitted that the 5th Pay commission has placed great emphasis on having

proper pension structure for the Petitioners. The Government of India on implementation of the recommendations of the 5th Pay commission issued Memo dated 17.12.1996 which memo is the milestone in the continuous process of coming to the decision in regard to granting a fair, just and reasonable pension to the Petitioners with dignity. Reference is made to O.M. dated 17.12.1996. It is pointed out that Respondent No. 2 has to adhere to these principles. In so far as Management staff of Respondent No. 2, pay commission was appointed known as Justice Mohan Pay Commission and recommendations were made applicable to the Management staff of Respondent No. 2 with effect from 1.1.1997. The pension has to be on the basis of the salary scales. The basic pension of the retired non-Management staff, it is submitted ought to be restructured based on the revised pay scales with effect from 1.1.1993 and grant of D.A. relief has to be in line with 5th Pay commission recommendations. Some Governmental organizations have granted ad hoc pension. Considering that the Respondent No. 2 is a high profile and profit making public sector undertaking with a high market capitalization and enjoying second position in the oil industry, the Petitioners pension should be revised to level the current cost of living. The pension must enable the retiree to live in the same

way as he was living before retirement so that the pensioners should live free from want, decently and at a standard equivalent to the pre-retirement level.

5. The Petitioners have relied on various judgments which we may immediately note.

. In *Somprakash Rekhi Versus Union of India and anr.* AIR 1981 SUPREME COURT 212. The Supreme Court held that the liability for the payment of full pension to the Petitioner was that of *Burmah Shell*, but, by virtue of Sections 3 and 4 of the Act of 1976, all the assets and liabilities vested in the Central Government and thereafter, in the respondent *Bharat Petroleum Corporation*. In that case certain deductions were sought to be made pursuant to some regulations. The court held that it cannot be done. In *Common Cause and Ors. Versus Union of India*, (1987) 1 Supreme Court Cases 142, the issue was of computation of pension. We really are not concerned with that aspect. Reliance is also placed in *D.S. Nakara and Ors. Vs. Union of India*, AIR 1983 SUPREME COURT 130. The issue there was of disparity of pension payable to those who had retired earlier than those in service and retired subsequent to the specified date. The Supreme Court held that retiree pensioners cannot be discriminated and ought to be

paid the pension in the like manner. In *Olga Tellis and Ors. Vs. Bombay Municipal Corporation and Ors.* AIR 1986 SC 180 has been cited to show that right to life includes right to livelihood. Reference was also made to the judgment in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Ors.* (1979) 3 Supreme Court Cases 489.

6. The real question is whether this class of pensioners are entitled to be paid the pension either based on recommendations of the 5th Pay commission or in terms of Mohan Pay Commission. The pension is payable by the employer to the employee as a reward for the work done so that in the evening of his life, the employee has means to maintain himself. It may be a condition of service or statutory benefit. The issue whether the pension should be paid or not is purely a matter of policy and if payable at what rate, would be within the jurisdiction of the Respondent No. 2. The employees of Respondent No. 2 after nationalization in so far as terminal benefits are concerned, are only being paid contributory provident fund and gratuity. No pension is being paid. It is only a class of employees who were with erstwhile ESSO/Caltex companies, pursuant to the pension scheme in those companies, and who were in the employment at the time of take over, their

Pensionary benefits have been protected. In their case also, the company terminated their contract and have employed them on new terms and conditions but has granted protection in so far as old terms qua pre-existing employees. Employees appointed by Respondent No. 2 after take over are not getting the benefit of pension. It is therefore, not the case of unreasonable classification and or arbitrariness. Pension is being paid in terms of the conditions of service which was applicable to the Petitioners while in employment of the erstwhile companies. This is not a case where Respondent No. 2 is giving to a section of its employees pension and denying to a class of pensioners like petitioners pension. It can not therefore, be said that Respondent No. 2 has acted arbitrarily and not considered the demand of the Petitioners for higher pension. The decision whether to enhance the pension or not is of Respondent No. 2. The Respondent No. 2 has to take into consideration its liabilities. Though Respondent No. 2 may be "State" for the purpose of Article 12 of the Constitution of India, the employees of Respondent No. 2 as Petitioners, are not the employees of Central Government. Their conditions of service are regulated in terms of their standing orders and other conditions of service. It is therefore, not possible to give a direction to respondent No. 2 to

pay pension at the particular rate or to treat this class of pensioner, as a class distinct from that of the other employees. We are of the considered view that no such direction can be given.

7. In so far as the contention that the right to life is affected, like petitioners there will be other employees who have retired subsequent to the Petitioners but who are not being paid pension considering that their terminal benefits are only contributory provident fund and payment of gratuity. It is only Petitioners who on account of their erstwhile condition of service with ESSO/Caltex whose pensionary benefits are being protected. It is therefore, not possible to issue any direction to Respondent No. 2 or to other respondents to direct payment of pension on the lines of the Central Pay Commission.

8. It is further case of the Petitioners that they should be paid pension in terms of the recommendations of Justice Mohan Pay Commission. Justice Mohan Pay Commission was set up for revision of pay scales in public sector undertakings. Incidentally the persons whose pay scales were revised on their retirement would be entitled to better pensionary benefits. In no way can this assist the case of the Petitioners. In our opinion,

therefore, there is no merit in this petition.

9. Consequently, Rule discharged. There shall be no order as to costs.

(ANOOOP V. MOHTA, J.)

(F.I.REBELLO, J.)